

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CAROLYN M. SWENSON,

Plaintiff,

v.

CAROLYN W. COLVIN,

Defendant.

NO: 14-CV-0006-TOR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 11, 12). David L. Lybbert represents Plaintiff. Catherine Escobar and Pamela Jean DeRusha represent Defendant. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion and grants Defendant's motion.

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## JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g).

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless."

1 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]  
2 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).  
3 The party appealing the ALJ’s decision generally bears the burden of establishing  
4 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

### 5 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

6 A claimant must satisfy two conditions to be considered “disabled” within  
7 the meaning of the Social Security Act. First, the claimant must be “unable to  
8 engage in any substantial gainful activity by reason of any medically determinable  
9 physical or mental impairment which can be expected to result in death or which  
10 has lasted or can be expected to last for a continuous period of not less than twelve  
11 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be  
12 “of such severity that he is not only unable to do his previous work[,] but cannot,  
13 considering his age, education, and work experience, engage in any other kind of  
14 substantial gainful work which exists in the national economy.” 42 U.S.C.  
15 § 423(d)(2)(A).

16 The Commissioner has established a five-step sequential analysis to  
17 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.  
18 § 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s  
19 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in  
20

1 “substantial gainful activity,” the Commissioner must find that the claimant is not  
2 disabled. 20 C.F.R. § 404.1520(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis  
4 proceeds to step two. At this step, the Commissioner considers the severity of the  
5 claimant’s impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers  
6 from “any impairment or combination of impairments which significantly limits  
7 [his or her] physical or mental ability to do basic work activities,” the analysis  
8 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant’s impairment  
9 does not satisfy this severity threshold, however, the Commissioner must find that  
10 the claimant is not disabled. *Id.*

11 At step three, the Commissioner compares the claimant’s impairment to  
12 several impairments recognized by the Commissioner to be so severe as to  
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R.  
14 § 404.1520(a)(4)(iii). If the impairment is as severe or more severe than one of the  
15 enumerated impairments, the Commissioner must find the claimant disabled and  
16 award benefits. 20 C.F.R. § 404.1520(d).

17 If the severity of the claimant’s impairment does meet or exceed the severity  
18 of the enumerated impairments, the Commissioner must pause to assess the  
19 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),  
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations (20 C.F.R.

2 § 404.1545(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's  
4 RFC, the claimant is capable of performing work that he or she has performed in  
5 the past ("past relevant work"). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is  
6 capable of performing past relevant work, the Commissioner must find that the  
7 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of  
8 performing such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's  
10 RFC, the claimant is capable of performing other work in the national economy.  
11 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner  
12 must also consider vocational factors such as the claimant's age, education and  
13 work experience. *Id.* If the claimant is capable of adjusting to other work, the  
14 Commissioner must find that the claimant is not disabled. 20 C.F.R.  
15 § 404.1520(g)(1). If the claimant is not capable of adjusting to other work, the  
16 analysis concludes with a finding that the claimant is disabled and is therefore  
17 entitled to benefits. *Id.*

18 The claimant bears the burden of proof at steps one through four above.  
19 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If  
20 the analysis proceeds to step five, the burden shifts to the Commissioner to

1 establish that (1) the claimant is capable of performing other work; and (2) such  
2 work “exists in significant numbers in the national economy.” 20 C.F.R.  
3 § 404.1560(c); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

#### 4 **ALJ’S FINDINGS**

5 Plaintiff applied for disability insurance benefits on February 16, 2011. Tr.  
6 137-38. Her application was denied initially and upon reconsideration, *id.* at 90-  
7 92, 95-96, and Plaintiff requested a hearing, Tr. 99. Plaintiff appeared before an  
8 administrative law judge (“ALJ”) on August, 6, 2012. *Id.* at 39-71. The ALJ  
9 issued a decision denying Plaintiff benefits on September 10, 2012. *Id.* at 17-32.

10 The ALJ found that Plaintiff met the insured status requirements of Title II  
11 of the Social Security Act through March 31, 2001. *Id.* at 22. At step one, the ALJ  
12 found that Plaintiff had not engaged in substantial gainful activity since October 1,  
13 1997, the alleged onset date, through March 31, 2001, her date last insured. *Id.* at  
14 22. At step two, the ALJ found that Plaintiff had the following severe  
15 impairments: thyroid cancer removed without metastasis or release; post surgical  
16 hypothyroidism, controlled with medication; and obesity. *Id.* at 22-23. At step  
17 three, the ALJ found that Plaintiff’s severe impairments did not meet or medically  
18 equal a listed impairment through the date last insured. *Id.* at 23-24. The ALJ then  
19 determined that Plaintiff had the RFC to

20 perform light work as defined in 20 CFR 404.1567(b). She is capable  
of work that involves frequent balancing, stooping, kneeling,

1 crouching, and crawling. Further, she is capable of work that involves  
2 frequent climbing of ramps and stairs, but no climbing of ladders,  
ropes, or scaffolds. In addition, she must avoid concentrated exposure  
3 to extreme temperatures, vibrations, respiratory irritants, and hazards.

4 *Id.* at 24. At step four, the ALJ found that Plaintiff was unable to perform any past  
5 relevant work. *Id.* at 26-27. At step five, after considering the Plaintiff's age,  
6 education, work experience, and RFC, the ALJ found Plaintiff could perform other  
7 work existing in significant numbers in the national economy in representative  
8 occupations, such as survey worker, mail clerk, and photo clerk. *Id.* at 27-28.  
9 Thus, the ALJ concluded that Plaintiff was not disabled and denied her claims on  
10 that basis. *Id.* at 28.

11 The Appeals Council denied Plaintiff's request for review on November 20,  
12 2013, *id.* at 1-6, making the ALJ's decision the Commissioner's final decision for  
13 purposes of judicial review. 42 U.S.C. § 405(g); 20 C.F.R. § 404.981.

## 14 ISSUES

15 Plaintiff seeks judicial review of the Commissioner's final decision denying  
16 her disability insurance benefits under Title II of the Social Security Act. ECF No.  
17 11. From Plaintiff's brief, the Court has discerned the following four issues for  
18 review:

- 19 1. Whether the ALJ erred in assessing Plaintiff's credibility;
- 20 2. Whether the ALJ erred in rejecting the opinion of Plaintiff's  
treating physician, Dr. Julie Smith;

3. Whether the ALJ erred at step two when she failed to include polycythemia rubra vera as a severe impairment; and
4. Whether the ALJ failed to pose a legally sufficient hypothetical question to the vocational expert when she failed to include all of Plaintiff's limitations.

*Id.* at 8-17.

## DISCUSSION

### A. Adverse Credibility Finding

In social security proceedings, a claimant must prove the existence of physical or mental impairment with “medical evidence consisting of signs, symptoms, and laboratory findings.” 20 C.F.R. §§ 416.908, 416.927. A claimant’s statements about his or her symptoms alone will not suffice. 20 C.F.R. §§ 416.908, 416.927. Once an impairment has been proven to exist, an ALJ “may not reject a claimant’s subjective complaints based solely on a lack of objective medical evidence to fully corroborate the alleged severity of pain.” *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). As long as the impairment “could reasonably be expected to produce [the] symptoms,” the claimant may offer a subjective evaluation as to the severity of the impairment. *Id.* This rule recognizes that the severity of a claimant’s symptoms “cannot be objectively verified or measured.” *Id.* at 347 (quotation and citation omitted).



1 In order to find Plaintiff's testimony unreliable, the ALJ is required to make  
2 "a credibility determination with findings sufficiently specific to permit the court  
3 to conclude that the ALJ did not arbitrarily discredit claimant's testimony."  
4 *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). An ALJ must perform a  
5 two-step analysis when deciding whether to accept a claimant's subjective  
6 symptom testimony. *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996). The  
7 first step is a threshold test from *Cotton v. Bowen* requiring the claimant to  
8 "produce medical evidence of an underlying impairment which is reasonably likely  
9 to be the cause of the alleged pain." 799 F.2d 1403, 1407 (9th Cir. 1986); *see also*  
10 *Bunnell*, 947 F.2d at 343. "Once a claimant meets the *Cotton* test and there is no  
11 affirmative evidence suggesting she is malingering, the ALJ may reject the  
12 claimant's testimony regarding the severity of her symptoms only if [the ALJ]  
13 makes specific findings stating clear and convincing reasons for doing so."  
14 *Smolen*, 80 F.3d at 1283-84 (citing *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.  
15 1993)). In weighing the claimant's credibility, the ALJ may consider many  
16 factors, including "(1) ordinary techniques of credibility evaluation, such as the  
17 claimant's reputation for lying, prior inconsistent statements concerning the  
18 symptoms, and other testimony by the claimant that appears less than candid; (2)  
19 unexplained or inadequately explained failure to seek treatment or to follow a  
20 prescribed course of treatment; and (3) the claimant's daily activities."

1 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (quoting *Smolen*, 80  
2 F.3d at 1284). If the ALJ's finding is supported by substantial evidence, the court  
3 may not engage in second-guessing. *Id.* “Contradiction with the medical record is  
4 a sufficient basis for rejecting the claimant’s subjective testimony.” *Carmickle v.*  
5 *Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (citing *Johnson v.*  
6 *Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995).

7 Here, Plaintiff contends the ALJ improperly discounted her credibility. ECF  
8 No. 11 at 14-15. Specifically, Plaintiff contends the ALJ made only “vague  
9 assertions that [Plaintiff’s] testimony is inconsistent with the record,” rather than  
10 providing clear and convincing reasons for rejecting Plaintiff’s statements and  
11 specifically identifying which testimony was not credible. *Id.* at 14.

12 This Court disagrees. The ALJ provided the following specific, clear, and  
13 convincing reasoning supported by substantial evidence for finding Plaintiff’s  
14 subjective statements not fully credible: (1) Plaintiff failed to seek treatment  
15 despite alleging debilitating symptoms; and (2) Plaintiff’s statements were  
16 inconsistent with the medical opinion testimony. Tr. 25-26.

17 First, the ALJ found Plaintiff’s statements concerning the severity of her  
18 symptoms and limitations were inconsistent with her failure to seek medical  
19 treatment. The ALJ noted the following regarding Plaintiff’s medical history  
20 following her 1997 thyroid surgery:

1 Although the claimant had severe impairments during the relevant  
2 time period, the medical evidence of record is not consistent with the  
3 claimant's testimony regarding the severity of these symptoms. In  
4 fact, there is very little medical evidence of record during the relevant  
5 time period. The record shows that on October 21, 1997[,] the  
6 claimant underwent a right thyroid lobectomy . . . On December 2,  
7 1997, claimant underwent a left thyroid lobectomy. The claimant went  
8 on a thyroid hormone after her thyroidectomies. She underwent no  
9 further adjuvant treatment post surgery and did not see an  
10 endocrinologist until August of 1999.

11 . . . .

12 Despite her allegations of extreme disabling symptoms, she said she  
13 did not go to the doctor. She testified that this was because she did not  
14 like doctors. However, the fact that she did not seek medical treatment  
15 suggests that her symptoms are not as severe as she alleged. This is  
16 particularly so in light of the fact that the record shows she regularly  
17 went to the doctor for check ups and treatment of symptoms similar to  
18 those she alleged at the hearing albeit subsequent to her date last  
19 insured.

20 Tr. 25-26. These inconsistencies between Plaintiff's alleged limitations and  
her failure to seek treatment provided a permissible and legitimate reason for  
discounting Plaintiff's credibility. *Tommasetti*, 533 F.3d at 1039 (finding  
that a plaintiff's "unexplained or inadequately explained failure to seek  
treatment or to follow a prescribed course of treatment" provided legitimate  
reason for rejecting claimant's credibility).

Second, the ALJ found that Plaintiff's statements concerning the severity of  
her symptoms and limitations were inconsistent with Dr. Vu's medical testimony.

Tr. 26. For instance, although the Plaintiff testified to debilitating migraines, joint

1 pain, fatigue, and dizziness following her thyroid surgery, *id.* at 24-25, the medical  
2 expert, Dr. Vu, testified that claimant's impairments did not impose any long term  
3 functional limitations. Tr. 26, 45. These inconsistencies between Plaintiff's  
4 statements and the testimony of a physician are relevant when weighing the  
5 Plaintiff's credibility. *See Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir.  
6 1997) ("In weighing claimant's credibility, the ALJ may consider his reputation for  
7 truthfulness, inconsistencies either in his testimony or between his testimony  
8 and . . . testimony from physicians and third parties concerning the nature, severity,  
9 and effect of the symptoms of which he complains.").

10 Accordingly, because the ALJ provided specific, clear, and convincing  
11 reasons based on substantial evidence for discounting Plaintiff's credibility, this  
12 Court does not find error.

### 13 **B. Opinion Evidence**

14 There are three types of physicians: "(1) those who treat the claimant  
15 (treating physicians); (2) those who examine but do not treat the claimant  
16 (examining physicians); and (3) those who neither examine nor treat the claimant  
17 [but who review the claimant's file] (nonexamining [or reviewing] physicians)."  
18 *Holohan*, 246 F.3d at 1201-02 (citations omitted). "Generally, a treating  
19 physician's opinion carries more weight than an examining physician's, and an  
20 examining physician's opinion carries more weight than a reviewing physician's."

1 *Id.* at 1202. “In addition, the regulations give more weight to opinions that are  
2 explained than to those that are not . . . and to the opinions of specialists  
3 concerning matters relating to their specialty over that of nonspecialists.” *Id.*  
4 (citations omitted). A physician’s opinion may be entitled to little, if any, weight  
5 when it is an opinion on a matter not related to her or his area of specialization. *Id.*  
6 at 1203 n. 2 (citation omitted).

7 A treating physician’s opinions are generally entitled to substantial weight in  
8 social security proceedings. *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219,  
9 1228 (9th Cir.2009). If a treating or examining physician’s opinion is  
10 uncontradicted, an ALJ may reject it only by offering “clear and convincing  
11 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d  
12 1211, 1216 (9th Cir. 2005). “However, the ALJ need not accept the opinion of any  
13 physician, including a treating physician, if that opinion is brief, conclusory and  
14 inadequately supported by clinical findings.” *Bray*, 554 F.3d at 1228 (quotation  
15 and citation omitted). “If a treating or examining doctor’s opinion is contradicted  
16 by another doctor’s opinion, an ALJ may only reject it by providing specific and  
17 legitimate reasons that are supported by substantial evidence.” *Bayliss*, 427 F.3d at  
18 1216 (citing *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995)). An ALJ may  
19 also reject a treating physician’s retrospective opinion which is merely based on a  
20 review of Plaintiff’s historical records, rather than on the treating physician’s

1 contemporaneous evaluation. *Magallanes v. Bowen*, 881 F.2d 747, 754 (9th Cir.  
2 1989).

3 Here, Plaintiff contends the ALJ erred by improperly rejecting the opinion of  
4 her treating physician, Dr. Julie Smith. ECF No. 11 at 8-13. Specifically, Plaintiff  
5 points to Dr. Smith's 2012 statement in which she opined polycythemia rubra vera  
6 had rendered Plaintiff unable to work, with symptoms dating back to 2000. *Id.* at  
7 18; Tr. 637.

8 This Court finds the ALJ properly rejected the retrospective opinion of Dr.  
9 Smith. Because Dr. Smith's opinion was contradicted, *see* Tr. 23 (noting that  
10 contemporaneous records attributed Plaintiff's symptoms to her thyroid condition,  
11 not polycythemia rubra vera), the ALJ need only have given specific and legitimate  
12 reasoning supported by substantial evidence to reject it. *Bayliss*, 427 F.3d at 1216.

13 The ALJ noted the following concerning Dr. Smith's opinion:

14 In the letter submitted by Dr. Smith three days after the hearing, she  
15 opines that over 10 years earlier the claimant's symptoms would have  
16 been disabling. This letter is given very little weight. It provides little  
17 evidentiary value. It is not consistent with the medical evidence of  
18 record. There are no opinions from any of the claimant's treating  
physicians during that time that would indicate the claimant was  
disabled due to the impairments. In fact in September of 2001, the  
claimant's actual treating physician at the time, noted that there was  
no evidence of any residual remnant or metastatic disease.

19 Tr. 26. Like the Doctor in *Magallanes v. Bowen* who had "no direct personal  
20 knowledge" of the plaintiff's condition during the relevant time period and whose

1 “retrospective opinion was contradicted by the findings and opinions” of doctors  
2 who conducted examinations during the relevant time period, Dr. Smith’s  
3 retrospective opinion is “scarcely different from any non-treating physician with  
4 respect to that time period.” 881 F.2d at 754. During the relevant disability time  
5 period—between Plaintiff’s onset date of October 1, 1997, through the date last  
6 insured, March 31, 2001—Plaintiff’s then evaluating physician, Dr. Stone, noted  
7 the same symptoms, such as fatigue, that Dr. Smith later attributed to polycythemia  
8 rubra vera, Tr. 700-01; however, Dr. Stone attributed these symptoms to Plaintiff’s  
9 thyroid condition, Tr. 23, 286, 289, which the ALJ classified as a severe  
10 impairment and considered when developing her RFC finding. Tr. 22-23, 24-26.  
11 Accordingly, the ALJ did not err in rejecting Dr. Smith’s opinion.

### 12 **C. Step Two Analysis**

13 Plaintiff bears the burden to establish the existence of a severe impairment  
14 or combination of impairments, which prevent her from performing substantial  
15 gainful activity, and that the impairment or combination of impairments lasted for  
16 at least twelve continuous months. 20 C.F.R. §§ 404.1505, 404.1512; 416.905,  
17 416.912; *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir. 2001). An  
18 impairment, to be considered severe, must significantly limit an individual’s ability  
19 to perform basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c); *Smolen*,  
20 80 F.3d 1290. An impairment that is “not severe” must be a slight abnormality (or

1 a combination of slight abnormalities) that has no more than a minimal effect on  
2 the ability to do basic work activities. SSR 96-3P, 1996 WL 374181. Basic work  
3 activities include “abilities and aptitudes necessary to do most jobs, including, for  
4 example, walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or  
5 handling.” 20 C.F.R. § 404.1521(b).

6 A physical or mental impairment is one that “results from anatomical,  
7 physiological, or psychological abnormalities which are demonstrable by  
8 medically acceptable clinical and laboratory diagnostic techniques.” 42 U.S.C. §§  
9 423(d)(3), 1382c(a)(3)(D). An impairment must be established by medical  
10 evidence consisting of signs, symptoms, and laboratory findings, and “under no  
11 circumstances may the existence of an impairment be established on the basis of  
12 symptoms alone.” *Ukolov v. Barnhart*, 420 F.3d 1002, 1005 (9th Cir. 2005) (citing  
13 SSR 96-4p, 1996 WL 374187 (July 2, 1996)) (defining “symptoms” as an  
14 “individual’s own perception or description of the impact of” the impairment).

15 Plaintiff contends the ALJ erred in her step two analysis when she concluded  
16 Plaintiff’s polycythemia did not constitute a severe impairment. ECF No. 11 at 8.  
17 In support, Plaintiff points to Dr. Smith’s 2012 letter. *Id.* 8-13; Tr. 700-01.

18 This Court finds the ALJ’s severe impairment analysis at step two was not  
19 flawed. As noted above, the ALJ rejected Dr. Smith’s retrospective opinion as  
20 being inconsistent with the opinion of Plaintiff’s treating physician during the



1 disability period, between October 1, 1997, and March 31, 2001. At that time, Dr.  
2 Stone attributed Plaintiff's symptoms to her thyroid condition, Tr. 23, 286, 289,  
3 which the ALJ noted as severe and considered when developing her RFC finding.  
4 Tr. 22-23, 24-26. Although the ALJ found that Plaintiff had been diagnosed with  
5 polycythemia rubra vera in 2002, after the relevant disability period, the ALJ found  
6 insufficient evidence in the record to find that Plaintiff was suffering from this  
7 condition prior to her date last insured. Tr. 22-23 (noting that Plaintiff's  
8 "[s]ubjective complaints alone are insufficient to establish a medically  
9 determinable impairment"); *see Ukolov*, 420 F.3d at 1005. Thus, Plaintiff has  
10 failed to meet her burden to establish that polycythemia rubra vera should have  
11 been classified as "severe" at step two.

12 Alternatively, even if the ALJ erred by not also concluding that the record  
13 supported polycythemia rubra vera as a severe impairment, the ALJ accounted for  
14 these symptoms and associated limitations in her ultimate RFC finding. *Molina*,  
15 674 F.3d at 1115. After all, step two merely screens out groundless claims. *See*  
16 *Smolen*, 80 F.3d at 1290. Because Plaintiff's claim progressed beyond step two,  
17 Plaintiff cannot show that she was harmed by the ALJ's step two finding. *See*  
18 *Lewis*, 498 F.3d 911 (holding that ALJ's failure to list the plaintiff's bursitis as a  
19 severe impairment at step two was harmless where ALJ considered limitations  
20 caused by the condition at step four). Any error in not classifying polycythemia

1 rubra vera as a severe impairment was harmless; thus, no reversible error has been  
2 shown.

3 **D. Hypothetical Question Posed to Vocational Expert**

4 “Hypothetical questions posed to the vocational expert must set out *all* the  
5 limitations and restrictions of the particular claimant . . . .” *Embrey v. Bowen*, 849  
6 F.2d 418, 422 (9th Cir. 1988). “Unless the record indicates that the ALJ had  
7 specific and legitimate reasons for disbelieving a claimant’s testimony as to  
8 subjective limitations such as pain, those limitations must be included in the  
9 hypothetical in order for the vocational expert's testimony to have any evidentiary  
10 value.” *Id.* at 423. “If the assumptions in the hypothetical are not supported by the  
11 record, the opinion of the vocational expert that claimant has a residual working  
12 capacity has no evidentiary value.” *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th  
13 Cir. 1984).

14 Plaintiff contends the ALJ’s hypothetical question posed to the vocational  
15 expert did not adequately express the full extent of her limitations. ECF No. 11 at  
16 15-17. Specifically, Plaintiff contends the question posed failed to account for the  
17 limitations associated with Plaintiff’s polycythemia rubra vera condition, which  
18 included problems with absenteeism, intermittent headaches, joint pain, abdominal  
19 pain, and fatigue. *Id.* at 16.

20 The Court disagrees. Plaintiff’s argument is derivative of her arguments

1 concerning the ALJ's rejection of Dr. Smith's opinion and the ALJ's failure to  
2 classify polycythemia rubra vera as a severe impairment. Given that the ALJ  
3 properly rejected Dr. Smith's opinion, which retrospectively opined Plaintiff  
4 suffered from polycythemia rubra vera during the relevant disability period, no  
5 error has been shown. *Batson v. Comm'r Soc. Sec. Admin.*, 359 F.3d 1190, 1197  
6 (9th Cir. 2004) (finding that it is proper for the ALJ to give little evidentiary  
7 weight to discredited evidence when determining the RFC finding). Therefore,  
8 given that the hypothetical question included the extent of Plaintiff's impairments  
9 supported by the record, no error has been shown.

10 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 11 1. Plaintiff's Motion for Summary Judgment (ECF No. 11) is **DENIED**.  
12 2. Defendant's Motion for Summary Judgment (ECF No. 12) is  
13 **GRANTED**.

14 The District Court Executive is hereby directed to file this Order, enter  
15 **JUDGMENT** for **DEFENDANT**, provide copies to counsel, and **CLOSE** the file.

16 **DATED** November 24, 2014.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge